

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RODULFO L. RIVERA,

Plaintiff,

v.

**DISCOVER BANK / DISCOVER
FINANCIAL SERVICES,**

Defendant.

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CIVIL ACTION NO.

DEFENDANT’S NOTICE OF REMOVAL

Defendant Discover Financial Services (“*Discover*”) files this *Notice of Removal* of this action to the United States District Court for the Eastern District of Texas, Sherman Division, and respectfully states:

I. INTRODUCTION

1. On August 11, 2016, Plaintiff Rodolfo L. Rivera filed his Complaint in Precinct 3, Place 2, of the Justice Court of Collin County, Texas. On August 28, 2017, Plaintiff filed his Objections to Discover’s Motion for Summary Disposition and, for the first time expressly stated that his claim against Discover is for violations of the Internal Revenue Code (26 U.S.C. § 1 *et seq.*). Specifically, Plaintiff stated that he intended to “show Defendant did not comply with all applicable portions of the Internal Revenue Code as required by law.” That is, Plaintiff’s right to relief, if any, arises under federal law and necessarily depends on the resolution of a question of federal law.

2. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, and other papers filed in the state court action and obtained by Discover are attached hereto marked as composite **Exhibit A** and incorporated herein by reference.

II. TIMELINESS OF NOTICE OF REMOVAL

3. Plaintiff's response to the Motion for Summary Disposition was filed and served on Discover on August 28, 2017. Therefore, this notice of removal is timely.

III. BASIS FOR REMOVAL: FEDERAL QUESTION JURISDICTION

4. A case may be removed to federal court if it could have been brought in federal court originally.¹ The district courts of the United States have original jurisdiction over all civil actions arising under the Constitution and laws and treaties of the United States.²

5. A claim "arises under" federal law when either (1) the well-pleaded complaint establishes that federal law creates the cause of action; or (2) the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law.³

6. If the case stated by the initial pleading is not removable, a defendant may remove within 30 days after receipt by the defendant a copy of "an amended pleading, motion, order or other paper from which it may first be ascertained" that the case is or has become removable.⁴ A response to a motion for summary judgment can qualify as an "other paper" to put defendant on notice of a federal cause of action.⁵

7. This Court has jurisdiction over this case under 28 U.S.C. § 1331 because Plaintiff's claims arise, in part, under the laws of the United States. Plaintiff alleges that Discover violated the Internal Revenue Code with regards to the handling of his credit card account.⁶

¹ 28 U.S.C. § 1441; *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003).

² *See* 28 U.S.C. § 1331.

³ *See Singh v. Duane Morris, LLP*, 538 F.3d 334, 338 (5th Cir. 2008).

⁴ 28 U.S.C. 1446(b)(3); *see Mumphrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 397 (5th Cir. 2013).

⁵ *Thompson v. Pyramid Contractors*, 125 F. Supp. 2d 200, 203 (E.D. Tex. 2000) (citing *Jackson v. Brooke*, 626 F. Supp. 1215, 1216–17 (D.Colo. 1986)).

⁶ *See. Pl.'s Obj. to Def.'s Mot. Summ. Disposition 2.*

8. The Supreme Court has held that cases raising issues necessitating interpretation of the U.S. Tax Code are properly litigated in federal court when, to secure the relief sought, the plaintiff must “establish both the correctness and the applicability to his case of a proposition of federal law.”⁷

9. The same result applies here. Plaintiff’s claim necessarily involves interpretation of the Internal Revenue Code because he claims Discover violated several provisions of it. Accordingly, federal-question jurisdiction is appropriate.

IV. VENUE

10. Venue for this case is proper in the U.S. District Court for the Eastern District of Texas, Sherman Division because this district and division include Collin County, Texas—the location of the pending state court action.

V. ADDITIONAL REQUIREMENTS

11. Written Notice of Removal will be provided to Plaintiff and filed with the Clerk for the Justice Court of Collin County, Texas.

12. Plaintiff demanded a jury trial in his Complaint.

⁷ See *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 9 (1983); *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005).

WHEREFORE, having satisfied the requirements for removal, Discover gives notice that Cause No. 32-SC-1600158 pending in Precinct 3, Place 2, of the Justice Court of Collin County, Texas has been removed to this Court.

Respectfully submitted,

By: /s/ Barry A. McCain

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**ATTORNEYS FOR DEFENDANT
DISCOVER FINANCIAL SERVICES**

CERTIFICATE AND NOTICE OF FILING

I certify that on September 6, 2017, this Notice of Removal was sent to the Clerk for the Justice Court of Collin County, Texas, and that written notice of filing of the Notice of Removal was served on all parties in accordance with the Texas Rules of Civil Procedure.

Via U.S. Mail and CMRRR

Rodulfo L. Rivera
5400 Quail Creek Drive
McKinney, TX 75070

Pro se Plaintiff

/s/ Barry A. McCain
BARRY A. MCCAIN

CERTIFICATE OF SERVICE

I certify that on September 6, 2017, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing has been forwarded to all parties, by and through their attorneys of record by operation of the Court's electronic filing system or by other means in accordance with the Federal Rules of Civil Procedure.

Via U.S. Mail and CMRRR

Rodulfo L. Rivera
5400 Quail Creek Drive
McKinney, TX 75070

Pro se Plaintiff

/s/ Barry A. McCain
BARRY A. MCCAIN